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Governor Baker Filing Legislation to Allow Authorities to Honor Federal Detainers for Violent, Dangerous Criminals

BOSTON – Governor Charlie Baker today is [filing legislation](#) that would give state and municipal police and court officers the statutory authority to honor certain detainer requests and administrative warrants from United States Immigration and Customs and Enforcement (ICE) for removable aliens independently in state custody because of new state criminal charges or sentences related to violent and serious crimes.

Such authority by law enforcement existed until last week when the Supreme Judicial Court ruled in *Commonwealth v. Lunn* that, in the absence of express statutory authority, state and local law enforcement officers may not honor requests from ICE to detain removable aliens.

“For years, many local police departments and the Trial Court have cooperated with ICE to ensure that they can detain violent and dangerous criminals, convicted of crimes like murder and rape, to keep our communities safe,” **said Governor Baker**. “This bill allows the State Police to honor specific detainers and provides local officials with the flexibility they need to set policies appropriate for their communities.”

The governor’s proposal does not authorize or allow law enforcement officers to enforce federal immigration law. Instead it fills the statutory gap identified by the SJC. It authorizes, but does not require, state and local law enforcement to honor detention requests accompanied by administrative warrants from ICE for aliens who pose a threat to public safety.

Upon receipt of a written request to detain by ICE, the bill would allow Massachusetts law enforcement to determine that an individual poses a threat to public safety and decide to detain that person if any of the following apply:

1. The person has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;
2. The person has been convicted of an offense of which an element was active participation in a criminal street gang;
3. The person has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the person's immigration status;
4. The person has been convicted of an aggravated felony; and
5. The person has been convicted of a crime of (i) domestic violence; (ii) sexual abuse or exploitation; (iii) trafficking in persons in violation of sections 50 or 51 of chapter 265 or like violations of the law of another state, the United States or a military, territorial or Indian tribal authority; (iv) drug distribution or trafficking; (v) second or subsequent operating or driving under the influence or (viii) any other offense for which the person has been sentenced to time in custody of 180 days or more.

"Local officials seeking to protect their communities should not be compelled to let dangerous individuals with serious criminal histories walk free due to an ambiguity in the law," **said Lt. Governor Karyn Polito**. "This proposal will allow police to maintain the strong trust they have built up with immigrant communities while making sure that hardened criminals are not put back on the streets."

"Any detention authorized by this bill would be limited to aliens already independently in state custody because of new state criminal charges or sentences," **said Secretary of Public Safety and Security Dan Bennett**. "This bill does not empower state or local police to proactively arrest people for immigration law violations; it would allow police to detain a person who is a threat to public safety for a limited period of time if that person were about to be released and the federal authorities were unable to immediately take the person into their custody."

Any agency seeking to use this new authority would be required to issue a policy identifying supervisory officers who would initially authorize detention of people who pose a threat to public safety and have been previously convicted of one or more serious crimes. Any detention in excess of 12 hours would be subject to judicial review.

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